IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

Bail Appl..No. 6084 of 2007()

CC.402/2006 of J.M.F.C., PATTAMBI

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: PETITIONER/ACCUSED NO.4:

BASHEER, S/O. ABDULLAKUTTY,
THAZHATHETHIL VEEDU, CHIRAMANENGAD,
KUNNAMKULAM P.O., THRISSUR DISTRICT.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS: COMPLAINANT:

STATE OF KERALA THROUGH THE
SUB INSPECTOR OF POLICE, CHALISSERY POLICE STATION
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY P.P. SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03/10/2007 ALONG WITH B.A.NOS.6086 & 6089/07, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A.NOs.6084, 6086 & 6089 OF 2007

Dated this the 3rd day of October, 2007

ORDER

Applications for anticipatory bail. The common petitioner in these petitions face indictment in three different prosecutions in which identical allegations are raised about the commission of offences punishable, inter alia, under Sec.379 of the IPC. All the cases are pending before the same Magistrate – the learned Judicial Magistrate of the First Class, Pattambi. Though the prosecutions were initiated in 2004 and 2006, the cases have not been finally disposed of. The petitioner has not appeared before the learned Magistrate and consequently, coercive processes have been issued against the petitioner. Non-bailable warrants of arrest issued by the learned Magistrate are chasing him.

2. The learned counsel for the petitioner submits that

the petitioner is absolutely innocent. His absence was not wilful or deliberate. The petitioner was granted bail in all these three cases earlier. He is now willing to surrender before the learned Magistrate and seek regular bail. He shall co-operate with the court for early completion of the proceedings. But he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. In these circumstances the learned counsel for the petitioner prays that appropriate directions under Sec.438 and/or Sec.482 of the Cr.P.C. may be issued in favour of the petitioner.

3. The allegations against the petitioner appear to be serious. It is also seen that, when these cases which have been pending for a long period of time, the petitioner was absconding. Be that as it may, the petitioner shall always be at liberty to surrender before the learned Magistrate and seek regular bail.

4. After the decision in **Bharat Chaudhary and another v. State of Bihar (**AIR 2003 SC 4662), it is by now trite that

powers under Sec.438 of the Cr.P.C. can be invoked in favour of a person who apprehends arrest in execution of a non-bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded, in the facts and circumstances of this case, that any such reasons exist.

5. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioner's application for regular bail on merits in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

6. In the result, these applications are dismissed; but with

the observation that if the petitioner surrenders before the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge